

TEXAS APPRAISER LICENSING
AND CERTIFICATION BOARD

vs.

JACKIE D. CUNYUS
TX-1336226-R

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DOCKETED COMPLAINT NO.
09-092

FINAL ORDER

On this 11 day of Dec, 2009, the Board considered the above-noted matter.

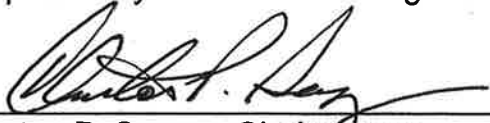
After proper notice was given, the above case was heard by an Administrative Law Judge (ALJ) at the State Office of Administrative Hearings (SOAH). The ALJ made and filed a proposal for decision containing findings of fact and conclusions of law. The proposal for decision was properly served on all parties, who were given an opportunity to file exceptions and replies as part of the administrative record. No such exceptions or replies were filed.

The Texas Appraiser Licensing and Certification Board, after review and due consideration of the proposal for decision, attached as Exhibit A hereto, adopts the findings of fact and conclusions of law of the ALJ contained in the proposal for decision and incorporates those findings of fact and conclusions of law into this Final Order as if such were fully set out and separately stated in this Final Order. All proposed findings of fact and conclusions of law submitted by any party that are not specifically adopted in this Final Order are denied.

NOW, THEREFORE, IT IS ORDERED by the Texas Appraiser Licensing and Certification Board that the certification of Jackie D. Cunyus in this matter is hereby **REVOKED**, effective twenty days after the date Jackie D. Cunyus is notified of this Final Order.

If enforcement of this Final Order is restrained or enjoined by an order of a court, this order shall become effective upon a final determination by said court or appellate court in favor of the Texas Appraiser Licensing and Certification Board.

Approved by the Board and Signed this 11 day of Dec, 2009.



Clinton P. Sayers, Chairperson
Texas Appraiser Licensing and Certification Board

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge
Texas Real Estate Commission

OCT 20 2009

October 19, 2009

Douglas E. Oldmixon
Administrator
Texas Appraiser Licensing and Certification Board
1101 Camino La Costa
Austin, Texas 78752

INTER-AGENCY

RE: Docket No. 329-09-5199.ALC; Jackie D. Cunyus

Dear Mr. Oldmixon:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with 1 TEX. ADMIN. CODE § 155.507(c), a SOAH rule which may be found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Church", written over a horizontal line.

Cassandra J. Church
Administrative Law Judge

CJC/ds
Enclosure

xc: Jackie D. Cunyus, 1402 Zephyr, Plainview, TX 79072 - VIA REGULAR MAIL
Troy Beaulieu, 1101 Camino La Costa, Austin, TX 78752 - (with 1 hearing CD(s); Certified Evidentiary Record) VIA-INTER-AGENCY

TEXAS APPRAISER LICENSING AND
CERTIFICATION BOARD,
Petitioner

V.

JACKIE D. CUNYUS
(TX-1336226-R)
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Texas Appraiser Licensing and Certification Board¹ (Staff/Board) seeks to revoke the residential real estate appraiser certification issued to Jackie D. Cunyus (Respondent). Staff alleges that Respondent violated a Board administrative rule by failing on two occasions to respond to Staff's inquiries and requests for documents related to a consumer complaint. Respondent did not respond to Staff's notice of hearing and did not appear at the hearing. The Administrative Law Judge (ALJ) recommends that Respondent's certification be revoked.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

On September 23, 2009, ALJ Cassandra J. Church convened the hearing at the State Office of Administrative Hearings' facility in Austin, Texas. Staff Attorney Troy Beaulieu represented Staff. Respondent did not appear and was not represented at the hearing. The record closed on the same day.

After establishing that appropriate notice of the hearing was provided to Respondent and that the Board has jurisdiction, Staff moved for a default. In accordance with 1 TEX. ADMIN. CODE § 155.501, the factual allegations in Staff's notice of hearing were accepted as true and the default was granted.

¹ The Texas Appraiser and Licensing Certification Board is an independent subdivision of the Texas Real Estate Commission. TEX. OCC. CODE ANN. § 1103.051.

II. DISCUSSION OF SANCTION

Based on Staff's allegations that have been deemed admitted, the ALJ determines that Respondent violated a Board rule by twice failing to respond to Staff's requests for information.

In the notice of hearing, Staff requested appropriate disciplinary action including imposition of an administrative penalty, remedial education, suspension or revocation of Respondent's certification, or a combination of these sanctions.² However, at the hearing, Staff requested only revocation of Respondent's certification. Although this was a first-time violation, Staff contended that the acts were willful, hence would subject Respondent to a suspension or revocation of his certification under the penalty policy adopted by the Board.³

The Board may suspend or revoke the certification of a person who has disregarded or violated a provision of the Act or the Board's administrative rules.⁴ In its penalty matrix, the Board provides for three levels of penalty for first time violators, depending on indicators of intent or culpability. If a violator does not demonstrate serious inability or unwillingness to comply and acknowledges the violation, only a letter is issued. If the first violation constitutes a serious but remediable deficiency, the Board may enter into an agreement with the respondent for remedial training for the adoption of preventative policies or procedures, or may assess an administrative penalty of between \$100.00 and \$500.00 per violation. If an appraiser commits the violations willfully or in a grossly negligent manner, the Board may suspend or revoke the appraiser's certification or impose an administrative penalty of between \$1,000.00 and \$3,000.00 per violation.

The ALJ infers from Staff's pleadings that Respondent's willfulness is demonstrated by his failure to respond to Staff's inquiries about a consumer complaint, although requested to do so not once, but twice. This is consistent with at least one recent Board order, although it is not

² Staff Exs. P-2 and P-3.

³ 22 TEX. ADMIN. CODE § 153.24(h).

⁴ TEX. OCC. CODE ANN. § 1103.518(2)(B) and 22 TEX. ADMIN. CODE § 153.20(a)(2).

entirely clear from the pleadings themselves what acts are considered to be indicators of willfulness or gross negligence.⁵

III. RECOMMENDATION

Based on the factual allegations deemed true due to Respondent's default, the ALJ recommends that the Board find that Respondent violated the Board rule regarding responding to a staff request for information, Rule 153.22. Based on the facts deemed true and on reasonable inferences from those facts, the ALJ recommends that the Board revoke Respondent's residential real property appraiser certification as a sanction for that violation.

IV. FINDINGS OF FACT

1. Jackie D. Cunyus (Respondent) holds residential real estate appraiser certification number TX-1336226-R (certification) issued by the Texas Appraiser License and Certification Board (Board).
2. On January 26, 2009, a complaint was filed against Respondent concerning possible violations of the Uniform Standards of Professional Appraisal Practice (USPAP), or other standards set by the Board, in his preparation of an appraisal of property located at 7513 Hwy. 86, Tulia, Texas 79088 (the Complaint).
3. On January 29 and May 29, 2009, the Board's staff (Staff) notified Respondent of the Complaint, provided him an opportunity to respond to the allegations, and requested that he provide documentation related to the Complaint.
4. Respondent failed to respond to either of Staff's inquiries and did not provide the requested documentation.
5. The two instances of Respondent's failure to respond to Staff inquiries were Respondent's first violations of the Act or of the Board's administrative rules.
6. Respondent's last address of record with the Board is: 1402 Zephyr, Plainview, Texas 79072.
7. On July 3, 2009, Staff sent Respondent its Original Statement of Charges by certified mail to his last address of record on file with the Board.

⁵ Staff Ex. P-4. Final Order, Docketed Complaint No. 09-089 (August 21, 2009).


8. On July 22, 2009, Staff sent its notice of hearing by certified mail, return receipt requested, to Respondent at his last known address of record on file with the Board.
9. On August 1, 2009, Respondent signed for delivery of the notice of hearing.
10. The hearing notice contained a statement of the time, place, and nature of the hearing; a statement of legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
11. The hearing notice contained the following language in at least 12-point, boldface type: "Failure to appear at the hearing will result in the Original Statement of Charges being admitted as true, the relief sought by TALCB granted, and a default judgment being taken against you."
12. Respondent did not submit an answer to Staff's allegations made in the notice of hearing.
13. The hearing on the merits convened on September 23, 2009, at the State Office of Administrative Hearings' facility in Austin, Texas, and the record closed that day.
14. Staff appeared at the hearing through Staff Attorney Troy Beaulieu. Respondent did not appear at the hearing either personally or through authorized representative.

V. CONCLUSIONS OF LAW

1. The Texas Appraiser Licensing and Certification Board (Board) has jurisdiction over this matter. TEX. OCC. CODE ANN. ch. 1103.
2. The State Office of Administrative Hearings has jurisdiction over the hearing in this proceeding pursuant to TEX. OCC. CODE ANN. § 1103.508, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. TEX. GOV'T CODE ANN. chs. 2001 and 2003.
3. Respondent was required to keep a current address on file with the Board, pursuant to TEX. OCC. CODE ANN. § 1103.403.
4. Respondent was properly served with notice of the hearing, pursuant to TEX. GOV'T. CODE ANN. §§ 2001.051 and 2001.052, TEX. OCC. CODE ANN. § 1103.502, and 22 TEX ADMIN. CODE § 157.9(b).
5. The factual allegations stated in the notice of hearing, incorporating the Original Statement of Charges, are deemed admitted, pursuant to 1 TEX. ADMIN. CODE § 155.501.
6. Based on the above Findings of Fact, Respondent violated 22 TEX. ADMIN. CODE § 153.22.

7. Based on the above Findings of Fact, Respondent's violation of 22 TEX. ADMIN. CODE § 153.22 was willful, within the meaning of 22 TEX. ADMIN. CODE § 153.24(h).
8. The Board is authorized to suspend or revoke the Respondent's appraiser certification for violation of the Board's rules. TEX. OCC. CODE ANN. § 1103.518(2)(B) and 22 TEX. ADMIN. CODE § 153.20(a)(2).
9. Based on the above Findings of Fact and Conclusions of Law, the Board should revoke Respondent's residential real estate appraiser certification.

SIGNED October 19, 2009.



CASSANDRA J. CHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS